IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.913 OF 2006

Ichalkaranji Nagarpalika, Ichalkaranji,
Through Chief Officer, Ichalkaranji .. Appellant

v/s.

Deepak Bapusaheb Jagatap .. Respondent

Mr. T.S. Ingale for the appellant.
Mr. Prashant Kulkarni for the respondent.

CORAM : ABHAY S. OKA, J.
DATED : 29TH NOVEMBER, 2007

P.C.

Heard the advocates appearing for the parties.

2. The appellant Municipal Council is the original defendant and the respondent is the original plaintiff. The suit was filed by the respondent contending that communication dated 14th November, 1991 issued by the appellant to the respondent, cancelling the building permission granted in favour of the respondent, is illegal and without jurisdiction. The said communication has been issued by the appellant in exercise of powers under section 51 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the "said Act").

3. The learned advocate for the appellant on instruction states that there is every justification for taking action under section 51 of the said Act. He, however, states that as the appellant has not complied with the requirement of sub-section (1) of section 51 of the said Act of giving an opportunity of being heard to the respondent before revocation of the permission, the appellant is withdrawing the direction of revocation contained in the communication dated 14th November, 1991. He states that the said communication may be treated as a show-cause notice to the respondent. He states that after giving an opportunity of being heard to the respondent, appropriate order will be passed by the appellant. He submits that in view of this statement, the impugned judgments and decrees be quashed and set aside. The learned counsel for the respondent has no objection to adopt the said course.

4. The aforesaid statement made by the advocate for the appellant on instructions of the appellant is accepted.

5. In view of the said statement, the impugned judgments and decrees are quashed and set aside and Regular Civil Suit No.504 of 1991 is disposed of as the same does not survive.

6. The communication dated 14th November, 1991 issued by the appellant to the respondent shall be treated as a show-cause notice. It will be open for the respondent to file a reply to the said show-cause notice within a period of six weeks from today. The appellant will pass an appropriate order in accordance with law after

giving an opportunity being heard to the respondent. All contentions of the parties in that behalf are expressly kept open.

7. It is obvious that if the order passed by the appellant is adverse to the respondent, it will be open for the respondent to challenge the said order by adopting the appropriate proceedings. If the order passed by the appellant is adverse to the respondent, the same shall not be acted upon for a period of three weeks from the date of communication of the said order to the respondent.

8. The second appeal is allowed in the above terms with no order as to costs.

Parties to act upon the authenticated copy of this order.

ABHAY S. OKA, J.